

# Chapter 6

## Federal/State Authority and Implementation

INTRODUCTION .....	6-1
MODULE 6-1: <u>The Structure of State Authorization</u> .....	6-1
MODULE 6-2: <u>RCRA Permitting in Authorized States</u> .....	6-5
REFERENCES .....	6-9
CHAPTER 6 INDEX .....	6-11

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# FEDERAL/STATE AUTHORITY AND IMPLEMENTATION

## INTRODUCTION

Chapter 6 briefly describes the RCRA provisions whereby EPA grants States and Territories authorization to implement the Subtitle C hazardous waste program within their boundaries. The scopes of authorization granted before and after Congress passed the Hazardous and Solid Waste Amendments of 1984 (HSWA) are addressed. Permitting responsibilities in authorized States and Territories are also discussed.

### MODULE 6-1: The Structure of State Authorization

#### **S T A T E AUTHORIZATION BEFORE HSWA**

Before HSWA, authorized States administered RCRA Subtitle C entirely in lieu of the Federal program

Under RCRA §3006, a State that applies and is found qualified by EPA to do so can take over administration and enforcement within the State's boundaries of the RCRA Subtitle C program. When EPA authorizes a State in this manner to administer and enforce the portion of the RCRA Subtitle C program that is sanctioned by RCRA provisions pre-dating HSWA, such authorization is referred to as "RCRA base authorization." Before Congress adopted HSWA in 1984, States with RCRA base authorization implemented the RCRA Subtitle C program within their boundaries entirely in lieu of the Federal program. Federal requirements that existed at the time a State became authorized no longer applied within the State, and EPA did not issue permits to facilities that the State was authorized to permit under its RCRA base authorization. When EPA issued new or amended Federal regulations pursuant to pre-HSWA RCRA authority, the Agency would administer them only in those States not having RCRA base authorization. In States with RCRA base authorization, such regulations did not take effect until the authorized State adopted them as state law. Further, unless such new or amended Federal regulations were more stringent than existing Federal regulations, a State with RCRA base authorization was not obligated to adopt them as state law. Instead, the State was allowed to ignore the new or amended, less stringent, pre-HSWA-based Federal regulations. If EPA issued more stringent, pre-HSWA-based, new or amended Federal regulations, such

**S T A T E  
AUTHORIZATION  
AFTER HSWA**

HSWA created three  
exceptions to exclusive state  
administration of RCRA  
Subtitle C

regulations would specify a date by which States with RCRA base authorization would be required to adopt them as state law. If an authorized State failed to incorporate the more stringent, pre-HSWA-based Federal regulations into its program by the specified date, the State would risk losing its base authorization.<sup>5</sup>

HSWA modified RCRA §3006 and created three exceptions to the rule that States with RCRA base authorization would implement RCRA Subtitle C within their boundaries entirely in lieu of the Federal program. The three exceptions are [40 CFR 271.3(b)]:

- (1) New, more stringent Federal requirements imposed pursuant to HSWA now take effect and are implemented immediately under Federal authority by EPA in all States, including States with RCRA base authorization;
- (2) New, more stringent Federal requirements promulgated by EPA pursuant to HSWA now supercede existing, less stringent provisions of authorized state programs. Such Federal requirements are implemented by EPA in authorized States until the States amend their programs to cover the changes; and
- (3) If new or amended Federal program requirements are being implemented by EPA in a State with RCRA base authorization, EPA issues permits or permit modifications in that State as required to carry out the implementation, even though the State still issues and enforces RCRA base permits. However, under such circumstances, RCRA §3006(c)(4) requires EPA to coordinate with the State. Also, the State can assist in administering the new or amended Federal requirements under the provisions of a State/EPA agreement [RCRA §3006(c)(3)].

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<sup>5</sup> Historically, EPA has not rescinded RCRA base authorizations for failure to enact equivalent authority within a specified time frame. For example, several States with RCRA base authorization did not enact adequate mixed waste regulatory authority within the required time frames. Nevertheless, EPA did not rescind the base authorization of any of these States. [See Appendix III which shows that as late as December 31, 1996, eight States with RCRA base authorization had not been granted mixed waste regulatory authority, even though the latest deadline set by EPA for such authorization was July 3, 1988.]

The HSWA exceptions to exclusive state administration only apply to new or amended, more stringent Federal program requirements imposed pursuant to HSWA

Significantly, these three exceptions only materialize when EPA promulgates new or amended Federal requirements *pursuant to HSWA* that are *more stringent* than existing Federal requirements. If EPA promulgates new or amended requirements pursuant to RCRA provisions that pre-date HSWA, then such requirements do not take effect in States with RCRA base authorization until the States adopt them, whether or not they are more stringent. Further, if EPA promulgates new or amended requirements pursuant to HSWA that are less stringent, or equivalent in stringency to existing Federal requirements, such new or amended requirements do not take effect in those States with RCRA base authorization and authorization for the affected HSWA program unless and until the States adopt them. In States with RCRA base authorization, but without authorization for the affected HSWA program, new or amended less stringent or equivalently stringent Federal HSWA requirements take effect according to the schedule set by EPA and are implemented by EPA unless and until the States become authorized for the affected HSWA program.

Example of Federal program requirements being imposed pursuant to RCRA provisions pre-dating HSWA

An example of EPA promulgating more stringent requirements under RCRA provisions that pre-date HSWA occurred in 1986. On July 3, 1986, EPA published notice that the hazardous components of mixed wastes, which the Agency had previously treated as exempt from RCRA Subtitle C regulations, were to be regulated under 40 CFR part 261. In light of this interpretation, States with RCRA base authorization were told that, to maintain their authorization, they had one year (i.e., until July 3, 1987), or if a statutory amendment was required, two years (i.e., until July 3, 1988), to implement any hazardous waste program changes needed to incorporate regulation of mixed wastes. Since EPA's revised interpretation of the applicability of RCRA to mixed waste was not the result of any HSWA provision, mixed waste remained exempt from RCRA Subtitle C Federal regulation in States with RCRA base authorization until such States made the program changes needed and received approval from EPA.



In eight States and the District of Columbia, mixed wastes are not regulated under RCRA Subtitle C

As of December 31, 1996, 39 States and one Territory had been granted mixed waste program authorization. Since 47 States have RCRA base authorization, that

means 8 States with RCRA base authorization are still not authorized to regulate mixed wastes. Hence, in those 8 States, mixed wastes are not regulated under RCRA Subtitle C. Similarly, the District of Columbia has received RCRA base authorization, but not mixed waste authorization. Therefore, mixed wastes are not regulated in the District of Columbia under RCRA Subtitle C (See Appendix III for detailed listings of States and non-state entities having RCRA base and mixed waste authorizations). Notwithstanding, a number of the States with RCRA base authorization but not mixed waste authorization are regulating mixed waste under the provisions of state laws.

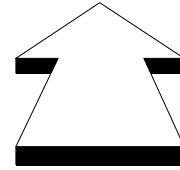
In States that have received no RCRA program authorizations, EPA administers the Federal RCRA Subtitle C program, which covers mixed waste.

The standards and requirements for RCRA Subtitle C state program authorization are presented in 40 CFR part 271, "Requirements for Authorization of State Hazardous Waste Programs." As of December 31, 1996, only three States and four Territories had not received RCRA base authorization (see Appendix III).

## MODULE 6-2: RCRA Permitting in Authorized States

Permitting in States having RCRA base authorization and authorization for all HSWA programs

In a State with RCRA base authorization and authorization for all HSWA programs listed on Table 1 of 40 CFR 271.1(j)(1), all RCRA permit applications and permit modification requests must be filed with the responsible state agency in accordance with the process outlined in Chapter 3.



**GO TO  
CHAPTER 3**

Permitting in States having RCRA base authorization and authorization for some, but not all, HSWA programs

If a State has RCRA base authorization but is not authorized to administer all of the effective HSWA regulations listed on Table 1 of 40 CFR 271.1(j)(1), the EPA Regional Office may issue those portions of new RCRA permits that the State is not authorized to issue. Likewise, the EPA Regional Office may add or amend HSWA portions of existing permits. Nevertheless, in States with RCRA base authorization but without some or all HSWA authorizations, all RCRA permit applications and permit modification requests should still be filed with the responsible state agency. The State will usually then coordinate the overall permitting process and solicit required input from EPA. Details of State/EPA interactions are presented in a State/EPA Memorandum of Agreement (MOA) defining the scope of the State's authorized RCRA program [40 CFR 271.8(b)].

Permitting in States having no RCRA program authorizations

In States without RCRA base authorization, RCRA permit applications and permit modification requests must be filed with the responsible EPA Regional office. Also, some States that do not have RCRA authorization may have their own independent hazardous waste permitting programs under state law that require submission of a separate state permit application. If so, DOE facilities should file state hazardous waste permit applications with the appropriate state agency.

Communication with both EPA and the responsible state agency is recommended

DOE personnel who obtain permits for hazardous and mixed waste treatment, storage, and disposal facilities should consult early in project planning with both EPA and the state agency responsible for hazardous waste regulation. This consultation is recommended regardless of whether the State administers any portion of the Federal RCRA program. It is also recommended

that DOE facilities provide copies of all correspondence related to RCRA permit applications, including the applications themselves, to both EPA and the responsible state agency.

EPA monitors state-issued RCRA permits

In addition to fulfilling its HSWA permitting responsibilities, if any, in authorized States, EPA also monitors all authorized state permitting programs. This may include reviewing state-issued permits for the treatment, storage, or disposal of hazardous waste [40 CFR 271.19(a)]. In this role, the EPA Region may comment if a State-issued permit provision seems inconsistent with the authorized state program. In most cases, if EPA decides to comment, the State will address or refute the comments, and the EPA Region will then withdraw the comment. However, in any event, a copy of EPA's comments will be sent to the applicant. Then, whether or not the State includes a condition in the final permit as suggested by EPA, EPA may take action under RCRA §3008(a)(3) to enforce the condition [RCRA §3008(a)(3); 40 CFR 271.19(e)].

Exhibit 6-1, located at the end of this module, provides an overview of the respective roles of EPA and States in implementing new or modified Federal RCRA regulations requiring issuance of permits or permit modifications.

Both EPA and the authorized State can enforce the provisions of an authorized RCRA base program

Once authorized to implement RCRA Subtitle C (including RCRA base authorization and authorization for any HSWA program), a State assumes primary RCRA hazardous waste enforcement responsibility within its boundaries for the authorized programs. Nevertheless, EPA can also enforce the authorized State's program requirements, as well as any more stringent new or modified Federal requirements imposed by HSWA [40 CFR 271.3(b)].<sup>6</sup> One exception to EPA's

EPA cannot enforce any portion of a State's hazardous waste program that is broader in scope than the Federal program

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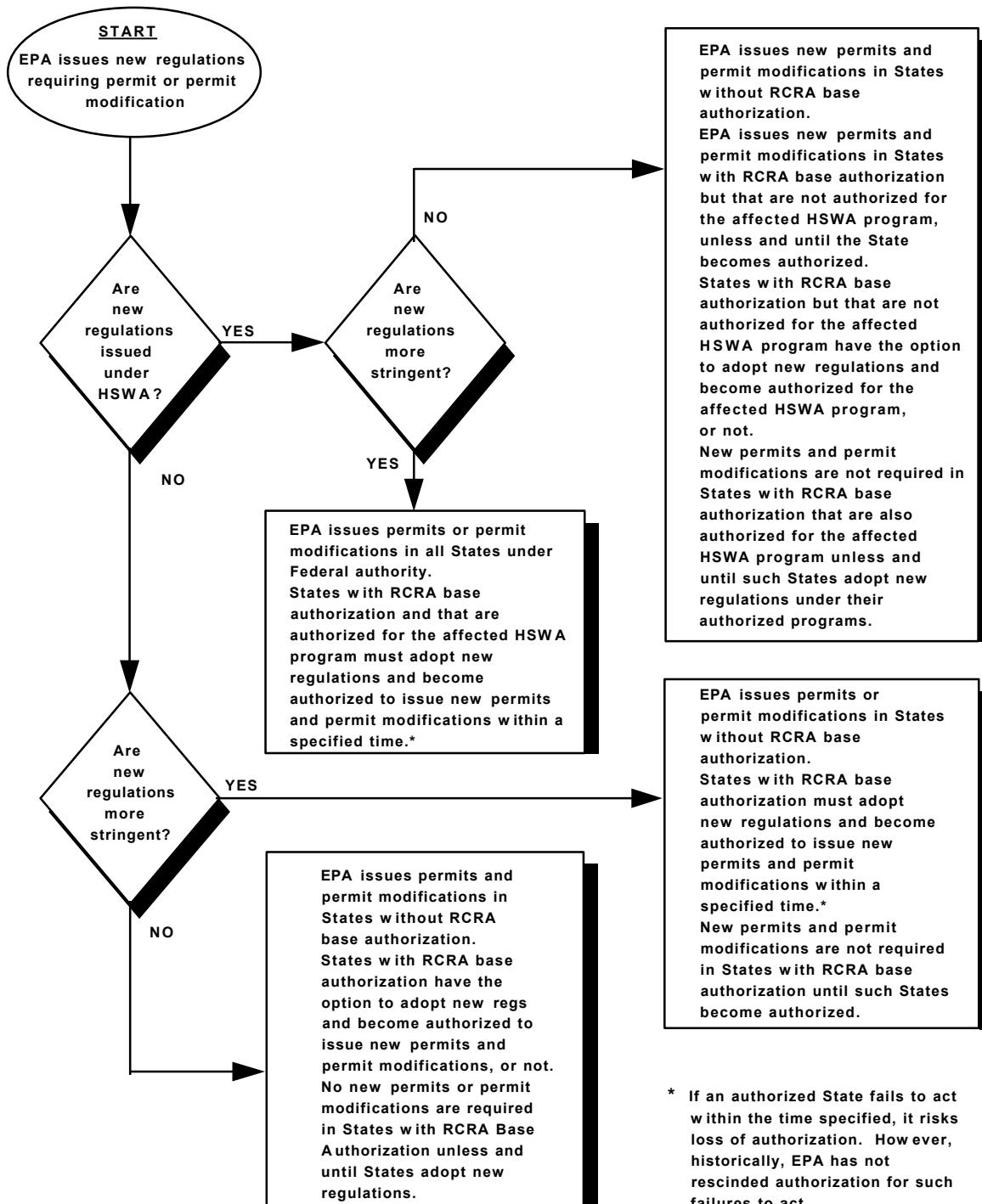
Beginning in 1985, EPA called for State/EPA Enforcement Agreements. Such Agreements ensure that clear criteria are established in advance for direct Federal enforcement in authorized States. They also set procedures for advance consultation and notification before direct Federal enforcement [EPA Policy Framework for State/EPA



power to enforce a State's program occurs if state requirements are broader in scope than the Federal program (i.e., the state laws increase the size of the regulated community beyond the size of the Federal program). While RCRA allows state programs to be

broader than the Federal program, the additional coverage is not part of the Federal program assumed by the State and, hence, is not enforceable by EPA. This notwithstanding, EPA can take enforcement action at any appropriate time under RCRA §7003 ("Imminent Hazard").

# **EXHIBIT 6-1** **EPA/STATE RCRA PERMITTING** **RESPONSIBILITIES**



## **REFERENCES**

### **Statutes**

Hazardous and Solid Waste Amendments of 1984 (HSWA), P.L. 98-616.

Resource Conservation and Recovery Act, P.L. 94-580, as amended.

### **Regulations**

40 CFR part 271, "Requirements for Authorization of State Hazardous Waste Programs."

### **Other Publications**

U.S. Environmental Protection Agency, "Policy Framework for State/EPA Enforcement Agreements" (August 25, 1986).

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## CHAPTER 6 INDEX

radioactive mixed waste .....	6-2-6-4
RCRA permit enforcement .....	6-6
RCRA permitting	
in States authorized for all HSWA programs .....	6-5
in States authorized for some HSWA programs .....	6-5
in States without Base authorization .....	6-5
state authorization	
after HSWA .....	6-2
before HSWA .....	6-1

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